

## FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554  
May 6 2 50 PM '93

DISPATCHED BY MM Docket No. 93-128 ✓

In re Applications of

TOCCOA FALLS                      File No. BPED-920113ML  
COLLEGE  
Belton, South Carolina  
(Hereafter "Toccoa Falls")

Req: 88.5 MHz; Channel 203C2  
50 kW; 91 Meters (H&V)

NAZARETH                      File No. BPED-920811MA  
COMMUNICATIONS, INC.  
Williamston, South Carolina  
(Hereafter "Nazareth")

Req: 88.3 MHz; Channel 203C2  
50 kW; 91 Meters (H&V)

For a Construction Permit  
For a Non-commercial Educational  
FM Station

## HEARING DESIGNATION ORDER

Adopted: April 22, 1993;

Released: May 6, 1993

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new, non-commercial, educational FM station.

2. *Toccoa Falls*. Toccoa Falls' application is incomplete in that it fails to contain page 3 of FCC Form 340 (Item 8, Section II, page 2). Item 8 directs the applicant to list all the parties to the application. To remedy this deficiency, Toccoa Falls will be required to provide the information requested on page 3 of FCC Form 340 (Item 8, Section II,) with the presiding Administrative Law Judge within 30 days of the release of this Order.

3. *Nazareth*. Section 73.503(a) of the Commission's rules states that:

A noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program.

Furthermore, following Commission action in *Moody Bible Institute*, 66 FCC 2d 162 (1977), the staff formulated processing standards for use in analyzing applicants for the educationally reserved FM frequencies. These processing

standards were later published as Appendix A to the *Notice of Inquiry* in Docket 78-164, 43 Fed. Reg. 30842 (1978). The standards state that an applicant for a noncommercial, educational FM license may qualify as either an educational institution or as an educational organization -- the standards for qualification as an organization requiring additional information from the applicant. Organizational applicants must demonstrate that they have an educational goal and are committed to the advancement of an educational program. In evaluating compliance with these standards, emphasis is given to programs proposed that are either instructional (for credit) or general educational in nature (no formal credit).

4. Nazareth has indicated, in response to Item 1C, Section II of FCC Form 340, that it is a "nonprofit educational organization". As such, Item 2, Section II, FCC Form 340 requires that the applicant describe in an exhibit its nature and purpose. Nazareth has stated (in Exhibit II-I, as amended) that:

Nazareth plans to work closely with Presbyterian College in Clinton, South Carolina, the proposed Greenville Christian School of the Arts (GCSA), as well as other local educational institutions, in producing and airing programs which have cultural and educational content. As set forth below in greater detail, certain programs to be aired on the proposed station will offer the opportunity for students at the Presbyterian College and the new Greenville Christian School of the Arts to obtain academic credit, and will serve to complement on-campus and in-school instructional courses and educational activities. As part of their class work Presbyterian College and GCSA students will work at Nazareth's facility in a number of technical and programming capacities.

5. Since Nazareth has applied as an educational organization, its application must meet the processing standards for this type of applicant. While Nazareth has indicated that it will have cultural and educational programming, developed in conjunction with educational institutions, we find the material submitted by Nazareth insufficient to make a determination that it is a qualified educational organization with a specific educational goal, independent of the institutions it references, and that it is committed to the advancement of an educational program in accordance with 47 C.F.R. § 73.503(a). Accordingly, an appropriate issue will be specified.

6. Nazareth's established "B" cut-off date for filing amendments of right was December 30, 1992. On that date Nazareth proffered an amendment which contained an updated list of the principals of the applicant, Item 8, Section II of FCC Form 340, as well as revisions to its exhibits detailing the educational purpose of the applicant, advancement of an educational program, and statement of proposed programming. However, this amendment was unaccompanied by an original signature of the applicant. The cover page with the original signature was received by the Commission on December 31, 1992. We shall accept the amendment for good cause, since it relates to Nazareth's basic qualifications. See *Azalea Corp.*, 31 FCC 2d 561 (1971). However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

7. *Other Matters.* The applicants have not indicated whether an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfallon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49560 (October 24, 1978). It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement themselves.

8. The respective proposals are for different communities. Consequently, it will be necessary to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

9. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Nazareth is a qualified educational organization as required by 47 C.F.R. § 73.503(a).

2. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if either.

11. IT IS FURTHER ORDERED, That Toccoa Falls file, with the presiding Administrative Law Judge within 30 days of the release of this Order, an amendment which contains the information relative to its principals as set forth in paragraph 2 hereinabove.

12. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Nazareth IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

13. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the

identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

#### FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay,  
Assistant Chief  
Audio Services Division  
Mass Media Bureau